

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS DIONDRE YOUNG,

Defendant-Appellant.

UNPUBLISHED

March 20, 2014

No. 314559

Kent Circuit Court

LC No. 12-001479-FH

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of felon in possession of a firearm, MCL 750.224f, and one count of possession of a dangerous weapon, MCL 750.224(1). The trial court sentenced defendant to concurrent sentences of 30 to 90 months' imprisonment for each of his four convictions. Because we conclude that the trial court properly denied defendant's motion to suppress and because defendant's convictions were not against the great weight of the evidence, we affirm.

In January 2012, the Grand Rapids Police Department executed a search warrant for 443 South Division Avenue and discovered defendant and seven other individuals in the apartment. Defendant's pit bull was present and aggressive. Defendant offered the use of his Chevy Blazer as a place to keep the pit bull, and he gave Sergeant John Bylsma a lanyard with keys. Bylsma gave the lanyard to Officer Timothy Hoornstra, but Hoornstra reported that none of the keys on the lanyard opened the Chevy. Bylsma then asked the people in the apartment about the ownership of a Cadillac in the parking lot. Shannon Parish claimed that it was hers and gave officers consent to search the vehicle and keep the pit bull inside it during the search. Hoornstra used a key from defendant's lanyard to unlock the Cadillac, and during the search of it, discovered three handguns, \$5,090 in cash, and a pair of brass knuckles inside. When confronted, Parish told the officers that she lied about owning the Cadillac, and that it was not her car. Parish claimed that she only gave consent because she feared for the pit bull's safety. Defendant admitted that he owned the Cadillac and that it was registered in his name, but disclaimed any knowledge of the handguns, brass knuckles, or cash found inside of the car. Despite his denials, defendant was arrested. Before trial, defendant argued that the search of the Cadillac was unconstitutional, and moved to suppress the discovery of the handguns and brass knuckles. The trial court denied the motion, finding that the police relied in good faith on

Parish's consent to the search. Defendant was convicted as previously stated, and now appeals as of right.

On appeal, defendant first argues that the trial court erred when it denied his motion to suppress the handguns and brass knuckles discovered in the Cadillac.

We review a trial court's findings of fact in a suppression hearing for clear error, but review the trial court's ultimate decision on a motion to suppress de novo. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). In addition, "[t]his Court reviews trial court decisions regarding the validity of consent for clear error." *People v Goforth*, 222 Mich App 306, 310; 564 NW2d 526 (1997). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993).

The Fourth Amendment protects individuals from unreasonable searches and seizures. US Const, Am IV; see also Const 1963, art 1, § 11. "The introduction into evidence of materials seized and observations made during an unlawful search is prohibited by the exclusionary rule." *People v Stevens*, 460 Mich 626, 633; 597 NW2d 53 (1999). "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *People v Borchard-Ruhland*, 460 Mich 278, 293; 597 NW2d 1 (1999). Voluntary consent is one exception and consent may come "either from the individual whose property is searched, or from a third party who possesses common authority over the premises." *Illinois v Rodriquez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990) (citations omitted). In either situation, "the police belief that they have valid consent must be reasonable under the circumstances; a good-faith belief is not the controlling criterion." *People v Grady*, 193 Mich App 721, 726; 484 NW2d 417 (1992). "A trial court is to review the totality of circumstances to determine the validity of consent to a search." *Goforth*, 222 Mich App at 310 (quotation marks and citation omitted).

In this case, for purposes of the suppression hearing, the trial court accepted as true that defendant was in the hallway, and not in the room with the others, when Bylsma asked the group who owned the Cadillac. Nevertheless, the trial court denied defendant's motion to suppress and found that the officers had valid voluntary consent to search the Cadillac because Bylsma reasonably relied on Parish's ownership claim. Defendant argues on appeal that Bylsma's reliance on Parish's ownership claim was unreasonable because the Cadillac's key was on defendant's lanyard and because the officers could have run a Law Enforcement Information Network (LEIN) check to determine the Cadillac's ownership. We disagree.

The record in this case shows that there was no question about ownership at the time the Cadillac was searched because Parish stated that the vehicle was hers and no one contradicted her claim. Thus, contrary to defendant's argument, the officers had no reason to complete a LEIN check or doubt Parish's claim. Moreover, Bylsma testified that he assumed the Cadillac was unlocked when Parish did not provide a key, and Hoornstra testified that he did not know that the lanyard belonged to defendant when Bylsma informed him that the owner of the Cadillac gave consent to search it. In addition, simply because defendant possessed a key at the time did not mean that Parish's ownership should have been questioned. Under these circumstances, defendant has failed to show that the trial court clearly erred by finding that it was reasonable for

the officers to rely on Parish's consent to search the Cadillac. *Goforth*, 222 Mich App at 310. Therefore, we conclude that the trial court did not err when it denied defendant's motion to suppress the handguns and brass knuckles. *Hyde*, 285 Mich App at 436.

Defendant also argues that the jury verdict was against the great weight of the evidence because there was no evidence that defendant actually possessed the handguns and brass knuckles found in the Cadillac. A defendant must move for a new trial in the trial court in order to preserve for appellate review an issue regarding the great weight of the evidence. *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011). Defendant did not move the trial court for a new trial; therefore, the issue is unpreserved. An unpreserved claim that the verdict was against the great weight of the evidence is reviewed for plain error affecting the defendant's substantial rights. *Id.* at 618.

A verdict is against the great weight of the evidence if "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). The elements of felon in possession of a firearm are that the defendant (1) possessed a firearm, (2) he or she has been convicted of a prior felony, and (3) less than three years have passed since all fines were paid, all imprisonment was served, or all terms of probation were completed. MCL 750.224f. The elements of possession of a dangerous weapon, specifically metallic knuckles, are that (1) the defendant knowingly possessed the metallic knuckles, and (2) that at the time the defendant possessed it, the defendant knew that the metallic knuckles were a weapon. MCL 750.224(1). Possession may be actual or constructive and may be proven by circumstantial evidence. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). "[A] person has constructive possession if he knowingly has the power and the intention at a given time to exercise dominion or control over a thing." *Id.* (citation and quotations omitted). "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 470-471.

In this case, defendant admitted that he owned the Cadillac, the Cadillac was registered in his name, and the Cadillac's key was on defendant's lanyard. Although defendant argues that the lack of DNA or fingerprint evidence shows he did not possess the firearms or brass knuckles, a jury could reasonably infer that defendant knew of the firearms and brass knuckles in his Cadillac and that the weapons were accessible to him. *Id.* Given these facts, the evidence did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow it to stand. *Musser*, 259 Mich App at 218-219. Therefore, defendant has failed to establish plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).¹

¹ We note that in his statement of the issue and in his request for relief defendant also states that the "sufficiency of the evidence . . . is against the great weight of the evidence." To the extent that defendant is attempting to also raise a sufficiency of the evidence challenge, we note that we need not address it since defendant has failed to sufficiently brief the merits of that claim. "An appellant may not merely announce his position and leave it to this Court to discover and

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.” *People v Kelly*, 231 Mich App 627, 640; 588 NW2d 480 (1998). Moreover, we would conclude that there was sufficient evidence to support defendant’s convictions for the same reasons that his convictions were not against the great weight of the evidence.